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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAMARIS CRUZ, individually and on behalf of all others similarly situated, Case No.: C 07-05688 JCS

CLASS ACTION

Plaintiff,
v.

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA AND FEDERAL FAIR
DEBT COLLECTION PRACTICES ACT**

MRC RECEIVABLES CORP.; MIDLAND
CREDIT MANAGEMENT, INC.; A.
SYRAN, an individual,

DEMAND FOR JURY TRIAL

Defendants. /

I. INTRODUCTION

1. Plaintiff brings this class action based upon Defendants' violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"). The Act prohibits debt collectors from engaging in false, deceptive, misleading, and unfair debt collection practices. In the Ninth Circuit, the impact of language used by a debt collector is judged from the perspective of the least sophisticated debtor in our society. *Swanson v. Southern Oregon Credit Services, Inc.*, 869 F.2d 1222, 1225 (9th Cir 1988).

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331 and 1337.

3. Venue lies in this district pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

4. Plaintiff, DAMARIS CRUZ, (“Ms. Cruz”) is a single woman, a citizen of the state of California, who resides at 71 Werner Avenue, Daly City, California.

5. Defendant MRC RECEIVABLES CARD (“MRC”) is a Delaware corporation and conducts business in California from 5775 Roscoe Court, San Diego, CA 92123. Service of process on MRC can be made on its California agent for service of process, Robin R. Pruitt, 8875 Aero Drive, #200, San Diego, CA 92123.

6. Defendant MIDLAND CREDIT MANAGEMENT, INC. (“Midland”) is a Kansas corporation and conducts business in California from 8875 Aero Drive, Suite 200, San Diego, CA 92123. Service of process on Midland can be made on its California agent for service of process, Robin R. Pruitt, 8875 Aero Drive, #200, San Diego, CA 92123.

7. Defendants MRC and Midland are wholly owned subsidiaries of Encore Capital Group, Inc., a non-party. Encore Capital Group, Inc., is a publicly held company. Encore Capital Group, Inc., trades under the NASDAQ symbol ECPG.

8. Defendant MRC purchases defaulted consumer debts for collection by Defendant Midland. Defendants MRC and Midland are debt collectors under the provisions of 15 U.S.C. § 1692a(6). These parties are hereafter collectively referred to as “Defendants.”

9. Defendant MRC appointed Defendant Midland as its agent to collect Plaintiff's debt. Defendant MRC is liable for the conduct of its agent in its collection practice.

10. Defendant A. SYRAN (“Syran”) is an employee of Defendant Midland. Defendant Syran may be served legal process by service at Midland Credit Management, Inc., 8875 Aero Drive, Suite 200, San Diego, CA 92123.

11. Defendant Syran is a debt collector under 15 U.S.C. § 1692a(6).

IV. FACTUAL ALLEGATIONS

12. On or about April 11, 2007, Defendants sent to Ms. Cruz a communication in an attempt to collect a consumer debt incurred by Plaintiff in the purchase of goods and services for her personal needs. A copy of the letter is attached as Exhibit A.

13. The Midland letter is signed, in typewritten form, by A. Syran, describing

1 himself/herself as “Senior Vice President, Operations and Marketing.”

2 14. Plaintiff alleges A. Syran was not involved in the collection of Plaintiff’s alleged
3 debt.

4 15. Plaintiff alleges A. Syran did not author or personally direct the sending of the
5 letter to Ms. Cruz.

6 16. Plaintiff alleges A. Syran did not have any meaningful involvement in or decision
7 in the sending of the collection letter to Ms. Cruz.

8 17. The collection letter, on its reverse side, Exhibit B, stated:

9 **As required by law, you are hereby notified that a negative**
10 **credit report reflecting on your credit record may be submitted**
11 **to a credit-reporting agency if you fail to fulfill the terms of**
12 **your credit obligations.**

13 That statement was false, as Defendant had filed a negative report with the credit bureau
14 sometime in March, 2007.

15 18. Defendants sent almost identical collection letters to Plaintiff on the following
16 dates: May 23, 2007, Exhibits C and D; and July 4, 2007, Exhibits E and F.

17 19. At all times relevant hereto, Defendant was acting by and through its agents,
18 servants and/or employees, who were acting within the course and scope of their agency or
19 employment, and under the direct supervision and control of Defendant.

20 20. At all times relevant hereto, the unlawful conduct of the Defendant, as well as that
21 of its agents, servants and/or employees, did not result from an isolated or solitary instance of
22 human error, but rather was willful, intentional, in reckless disregard of the FDCPA, and
23 consistent with Defendant’s corporate policy.

24 **V. CLASS ALLEGATIONS**

25 21. Plaintiff brings this action individually and as a class action, pursuant to Rules
26 23(a) and 23(b) of the Federal Rules of Civil Procedure, on behalf of the following Class: All
27 persons in the State of California during the one-year period prior to the filing of this Complaint
28 and up through the time of judgment of this action who: (a) received one or more of the letters
attached hereto as Exhibits A, C, and E, with the reverse sides attached as Exhibits B, D, and F.

1 22. The Class is so numerous that joinder of all members is impracticable. Although
2 the precise number of Class members is known only to Defendant, Plaintiff avers upon
3 information and belief that the Class numbers is in the thousands.

4 23. There are questions of law and fact common to the Class that predominate over
5 any questions affecting only individual Class members. The principal question is whether the
6 Defendant violated the FDCPA by sending a collection letter that misrepresented the
7 involvement of a high-ranking officer, A. Syran, in authorizing and sending the collection letters,
8 and falsely threatening a negative credit report when such a report had already been made.

9 24. Plaintiff's claims are typical of the claims of the Class, which all arise from the
10 same operative facts and are based on the same legal theories.

11 25. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is
12 committed to vigorously litigating this matter. Further, Plaintiff has retained counsel highly
13 experienced in class action litigation to prosecute his claims and those of the Class.

14 26. This action should be maintained as a class action because the prosecution of
15 separate actions by individual members of the Class would create a risk of inconsistent or
16 varying adjudications with respect to individual members which would establish incompatible
17 standards of conduct for the parties opposing the Class, as well as a risk of adjudications with
18 respect to individual members which would as a practical matter be dispositive of the interests of
19 other members not parties to the adjudications or substantially impair or impede their ability to
20 protect their interests.

21 **VI. FIRST CAUSE OF ACTION**

22 (Claim for violation of the Fair Debt Collection Practices Act)

23 27. Plaintiff repeats the allegations contained above as if the same were here set forth
24 at length.

25 28. Section 1692e of the FDCPA prohibits a debt collector from using any false,
26 deceptive, or misleading representation or means in connection with the collection of any debt.
27 15 U.S.C. § 1692e, § 1692e(10).

28 29. The FDCPA prohibits any debt collector from distributing any written

1 communication which creates a false impression as to its source, authorization, or approval. 15
 2 U.S.C. § 1692e(9).

3 30. Section 1692f of the FDCPA prohibits a debt collector from using unfair and
 4 unconscionable means in collection of a debt.

5 31. Defendant Midland has violated the FDCPA by the use of false, deceptive, and
 6 misleading representations as to the involvement of its Executive Vice President in the collection
 7 of Plaintiff's debt.

8 32. Use of a high level officer as the author and signator of the debt collection letter
 9 was an unfair and unconscionable means used in the collection of a debt, in violation of 15
 10 U.S.C. § 1692f.

11 33. Defendant falsely represents that a negative credit report reflecting on Plaintiff's
 12 credit report would be submitted to a credit reporting agency, violating 15 U.S.C. § 1692e, §
 13 1692e(10), and § 1692f, as an unfair and unconscionable means to collect a debt, as the negative
 14 report had already been submitted.

15 **VII. PRAYER**

16 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated
 17 request of this Court the following monetary and equitable relief:

18 A. An Order certifying that the action be maintained as a class action under
 19 Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and Plaintiff's
 20 undersigned counsel to represent the Class.

21 B. Pursuant to 15 U.S.C. § 1692k(a)(2)(B) statutory damages of (a) \$1,000.00 for the
 22 named Plaintiff and (b) a sum not to exceed the lesser of \$500,000.00 or 1 per centum of the net
 23 worth of Defendants for all other class members.

24 C. Reasonable attorney fees and costs pursuant to 15 U.S.C. 1692k(a)(2)(B)(3).

25 D. Such other and equitable relief as this Court may deem necessary or proper.

26 Dated: 11/6/07

27 /s/
 28 Irving L. Berg
 THE BERG LAW GROUP
 ATTORNEY FOR PLAINTIFF

DEMAND FOR TRIAL BY JURY.

Plaintiff hereby demands a trial by jury.

Dated: 11/6/06

/s/
Irving L. Berg

EXHIBIT A



P.O. Box 939019

San Diego, CA 92193-9019



ADDRESS SERVICE REQUESTED

04-11-2007

#BWNHLTH

1652-35450

#0000 0850 8203 5735#

DAMARIS R CRUZ

71 WERNER AVE

DALY CITY, CA 94014-2444

Settlement Opportunity

Contact Information: Tel (800) 282-2644

Fax (800) 306-4443

Hours of Operation: M-Th 6am - 7pm; Fri 6am - 5pm;

Sat 6am - Noon PST

Current Owner: MRC Receivables Corp.

Original Creditor: UNION PRIVILE

Original Account No: 5480420011470257

MCM Account No: 8508203573

Current Balance: \$1,787.84

Payment Due Date: 05-11-2007

Letter Code: 06601010

Dear DAMARIS R CRUZ,

You won't want to miss this settlement opportunity offered to you by Midland Credit Management, Inc., servicer of the above referenced account.

Recognizing that you may have gone through some financial difficulty and have been unable to satisfy your account we would like to offer you a **positive and flexible option** to resolve your account for 75% off the Current Balance.

If we receive payment by 05-11-2007 in the amount of \$446.96, we will consider the account balance paid in full!

CALL NOW! To take advantage of this opportunity, please contact us **TOLL-FREE at (800) 282-2644** and any of our Account Managers will be able to assist you.

MAIL! You may prefer to settle your Current Balance by using the Acceptance Certificate below. Simply detach the form and enclose it with your \$446.96 payment in the envelope provided. In order to receive payment by 05-11-2007, please mail no later than 05-06-2007.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Sincerely,

A. Syran

Senior Vice President, Operations & Marketing

Please tear off and return lower portion with payment in envelope provided

Acceptance Certificate

MCM Account Number: 8508203573

Current Balance: \$1,787.84

Amount Due: \$446.96

Make Check Payable to: Midland Credit Management, Inc.

Payment Due Date: 05-11-2007

DAMARIS R CRUZ

71 WERNER AVE

DALY CITY, CA 94014-2444



Midland Credit Management, Inc.

Department 8870

Los Angeles, CA 90084-8870



08 8508203573 5 0044696 051107 7

EXHIBIT B

Important Disclosure Information

**Please understand this is a communication from a debt collector. This is an attempt to collect a debt.
Any information obtained will be used for that purpose.**

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.

EXHIBIT C



P.O. Box 939019
San Diego, CA 92193-9019

Settlement Opportunity

05/23/2007

#BWNHLTH **AUTO
#0000 0850 8203 5735#

0223101 01 AT 0.334 **AUTO T3 0 7039 94014-



DAMARIS R CRUZ
71 WERNER AVE
DALY CITY CA 94014-2444

Contact Information: Tel (800) 282-2644
Fax (800) 306-4443

Hours of Operation: M - Th 6 am - 7 pm;
Fri 6 am - 5 pm;
Sat 6 am - noon PST

Current Owner: MRC Receivables Corp.

Original Creditor: UNION PRIVILE
MCM Account No: 8508203573
Current Balance: \$1,804.34
Payment Due Date: 06/22/2007
Letter Code: 06806010

Dear DAMARIS R CRUZ,

You won't want to miss this settlement opportunity offered to you by Midland Credit Management, Inc., servicer of the above referenced account.

Recognizing that you may have gone through some financial difficulty and have been unable to satisfy your account we would like to offer you a **positive and flexible option** to resolve your account for 40% off the Current Balance.

**If we receive payment by 06/22/2007 in the amount of
\$1,082.60, we will consider the account balance paid in full!**

CALL NOW! To take advantage of this opportunity, please contact us **TOLL-FREE at (800) 282-2644** and any of our Account Managers will be able to assist you.

MAIL! You may prefer to settle your Current Balance by using the Acceptance Certificate below. Simply detach the form and enclose it with your \$1,082.60 payment in the envelope provided. In order to receive payment by 06/22/2007, please mail no later than 06/17/2007.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Sincerely,
A. Syran
Senior Vice President, Operations & Marketing

Please tear off and return lower portion with payment in envelope provided

Acceptance Certificate

MCM Account Number: 8508203573
Current Balance: \$1,804.34
Amount Due: \$1,082.60

Make Check Payable to: Midland Credit
Management, Inc.
Payment Due Date: 06/22/2007

DAMARIS R CRUZ
71 WERNER AVE
DALY CITY CA 94014-2444



Midland Credit Management, Inc.
Department 8870
Los Angeles, CA 90084-8870

5G70

08 8508203573 5 0108260 062207 0

EXHIBIT D

Important Disclosure Information

Please understand this is a communication from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.



EXHIBIT E



San Diego, CA 92193-9019



ADDRESS SERVICE REQUESTED

07-04-2007

#BWNHLTH

1651-14203

#0000 0850 8203 5735#

DAMARIS R CRUZ

71 WERNER AVE

DALY CITY, CA 94014-2444

**Settlement Opportunity**

Contact Information: Tel (800) 282-2644
Fax (800) 306-4443
Hours of Operation: M-Th 6am - 7pm; Fri 6am - 5pm;
Sat 6am - Noon PST
Current Owner: MRC Receivables Corp.
Original Creditor: UNION PRIVILE
Original Account No: 5480420011470257
MCM Account No: 8508203573
Current Balance: \$1,820.84
Payment Due Date: 08-03-2007
Letter Code: 07059010

Dear DAMARIS R CRUZ,

You won't want to miss this settlement opportunity offered to you by Midland Credit Management, Inc., servicer of the above referenced account.

Recognizing that you may have gone through some financial difficulty and have been unable to satisfy your account we would like to offer you a **positive and flexible option** to resolve your account for 40% off the Current Balance.

**If we receive payment by 08-03-2007 in the amount of
\$1,092.50, we will consider the account balance paid in full!**

CALL NOW! To take advantage of this opportunity, please contact us **TOLL-FREE at (800) 282-2644** and any of our Account Managers will be able to assist you.

MAIL! You may prefer to settle your Current Balance by using the Acceptance Certificate below. Simply detach the form and enclose it with your \$1,092.50 payment in the envelope provided. In order to receive payment by 08-03-2007, please mail no later than 07-29-2007.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Sincerely,
A. Syran
Senior Vice President, Operations & Marketing

Please tear off and return lower portion with payment in envelope provided

Acceptance Certificate

MCM Account Number: 8508203573
Current Balance: \$1,820.84
Amount Due: \$1,092.50
Make Check Payable to: Midland Credit
Management, Inc.
Payment Due Date: 08-03-2007

DAMARIS R CRUZ
71 WERNER AVE
DALY CITY, CA 94014-2444



Midland Credit Management, Inc.
Department 8870
Los Angeles, CA 90084-8870



08 8508203573 5 0109250 080307 6

EXHIBIT F

**Please understand this is a communication from a debt collector. This is an attempt to collect a debt.
Any information obtained will be used for that purpose.**

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.